Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978 No. 78-1048

EDWARD M. MURPHY, II, *Appellant*

v.

PENNSYLVANIA STATE BOARD OF BAR EXAMINERS, *Appellee*

MOTION TO DISMISS OR AFFIRM

Appeal from the Judgment of the Supreme Court of Pennsylvania, at No. 8, E.D., Miscellaneous Docket 1978, Order dated October 5, 1978.

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MOTION TO DISMISS OR AFFIRM

The Appellee, Pennsylvania Board of Law Examiners, moves this Court to dismiss the appeal in the above entitled case or, alternatively, to affirm the decision of the Supreme Court of Pennsylvania on the following grounds:

1. The federal questions presented in this appeal were neither raised in the state court nor expressly passed on by that court.

2. This case does not come within the appeal jurisdiction of this Court.

3. This appeal fails to present any substantial federal questions.

STATEMENT

This is a direct appeal from a decision of the Supreme Court of Pennsylvania upholding an order of the Pennsylvania Board of Law Examiners which denied the Appellant's application to sit for the Pennsylvania bar examination.

In Pennsylvania, applications for admission to the state bar are initially passed upon by the Board of Law Examiners which evaluates the applications under standards contained in rules promulgated by the Pennsylvania Supreme Court. Applicants are given the right to petition the Supreme Court for review of any adverse decision of the Board.

The Appellant initially applied for permission to take the Pennsylvania bar examination in 1976. At that time, Rule 8(c)(2) of the Pennsylvania Rules of the Supreme Court was in effect. That rule required that applicants for the state bar have attended a law school accredited by the American Bar Association (ABA) or "have acquired a legal education which in the option of the State Board is the equivalent." The Board rejected the Appellant's application under this rule because the Appellant had attended an unaccredited law school. The equivalency provision of Rule 8(c)(2) had been interpreted by the Board only to apply to students from foreign law schools. The Appellant petitioned the Pennsylvania Supreme Court for review of the Board's determination and his petition was denied.

In 1977, the Appellant filed a complaint in the United States District Court for the Eastern District of Pennsylvania challenging the Board's decision. That complaint was dismissed for failure to state a claim upon which relief can be granted. No appeal was taken. The Appellant then petitioned the Pennsylvania Supreme Court again for review of the Board's action. By the time of this second petition, Rule 8(c)(2) had been repealed and the Pennsylvania Bar Admission Rules had been promulgated by

the Supreme Court. Rule 203 of those new rules states that, with the exception of foreign law students, all bar applicants must have graduated from an accredited law school. Thus, the Board's interpretation of former Rule 8(c)(2) was made explicit. In an opinion dated October 5, 1978, the Pennsylvania Supreme Court, with one justice dissenting, upheld the action of the Board of Law Examiners. It is from this decision of the Pennsylvania Supreme Court that the Appellant has taken this appeal.

ARGUMENT

I. The Questions which the Appellant Seeks to have Reviewed were not raised Below.

The Appellant contends in this appeal that the denial of his application for the Pennsylvania bar examination violated his rights to due process and equal protection under the Fourteenth Amendment. However, the Appellant did not raise either of these issues, or any other federal questions, in his petition to the Pennsylvania Supreme Court.

In his jurisdictional statement, at p. 7, the Appellant claims that he had raised these Fourteenth Amendment issues in certain paragraphs of his state court petition. A review of the petition shows that, in fact, the Appellant did not specifically raise these issues at any point in the petition. Consequently, the Pennsylvania Supreme Court, in its *per curiam* opinion, considered only a state constitutional question.

Because no federal questions were either raised in or considered by the court below, there is nothing for this Court to review in this appeal.

II. This Case is not within the Appeal Jurisdiction of this Court.

This case does not draw into question a statute of the Commonwealth of Pennsylvania and no federal questions were raised in the state court. Therefore, this case is not within the appeal jurisdiction of this Court as that jurisdiction is prescribed in 28 U.S.C. §1257(1) and (2).

III. No Substantial Federal Question is Presented in this Appeal.

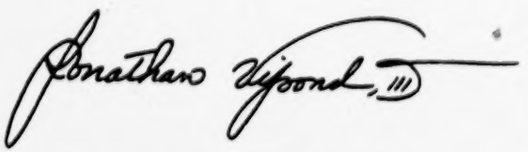
It is clear that a state can set qualifications for admission to its bar as long as the qualifications have a rational connection to the fitness or capacity of applicants to practice law. *Schware v. Board of Bar Examiners of the State of New Mexico*, 353 U.S. 232, 239 (1957).

The requirement set down by the Pennsylvania Supreme Court that all applicants for the state bar graduate from ABA-accredited law schools is rationally related to ensuring the competency of the members of the state bar. The Board of Law Examiner's decision to reject the Appellant's application because of lack of conformity with this requirement violated neither the Appellant's right to due process nor his right to equal protection.

Even if the Appellant's contention had been raised in the Pennsylvania Supreme Court, no substantial federal question would be presented by this appeal.

CONCLUSION

For the foregoing reasons, the Appellee, the Pennsylvania Board of Law Examiners, moves that this appeal be dismissed or that the decision of the Pennsylvania Supreme Court be affirmed.



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